

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-PM-12774 -RAP (S192393)
)	
RICHARD JOHN RUSZAT II,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 220432,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent **Richard John Ruszat II** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. Therefore, the court orders that respondent be involuntarily enrolled as an inactive member of the State Bar. The court also recommends, among other things, that respondent's probation be revoked, that the previously stayed, two-year suspension be lifted, and that he be actually suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

Significant Procedural History

On April 11, 2012, the Office of Probation filed and properly served a motion to revoke probation on respondent. The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion.

The court takes this matter under submission on May 16, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on July 29, 2002, and has been a member of the State Bar of California at all times since that date.

Facts

On June 27, 2011, in Supreme Court case No. S192393, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years, including a six month period of actual suspension (with credit given for the period of interim suspension which commenced on March 15, 2007 and ended on November 18, 2008), as recommended by the Hearing Department of the State Bar Court in its decision filed September 23, 2010 (State Bar Court case No. 06-C-10234); and
2. Respondent comply, among other things, with the following probation conditions:
 - A. During the period of probation, respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty

of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

- B. Respondent must obtain an examination of his mental and physical condition with respect to his substance abuse issue and must comply with any treatment/monitoring plan recommended following such examination. The examination was to be conducted by August 26, 2011. Help/treatment/monitoring was to commence immediately after the examination and, in any event, no later than 30 days after the examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence that he was complying with this condition of probation.

The Supreme Court order became effective on July 27, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.²

On July 19, 2011, and October 13, 2011, the Office of Probation wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and the probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, and instruction sheets or forms to use in submitting quarterly reports.

At respondent's request, the July 19, 2011 reminder letter with attachments was emailed to respondent on July 27, 2011, and was successfully delivered to respondent.

²Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

The letters were not returned as undeliverable. On August 8, 2011, respondent met with probation deputy Michael Kanterakis of the Office of Probation. All of respondent's conditions were reviewed at the meeting. Thereafter, they were in frequent communications regarding the probation conditions of medical examinations and quarterly reports with which respondent must comply.

Still, respondent failed to file his first quarterly report due October 10, 2011.

Respondent told the Office of Probation that he had obtained examinations of his mental and physical conditions with respect to the substance abuse issue and that his treatment was to follow soon. But, respondent has failed to submit proof that he had obtained such examinations by August 26, 2011, or at any time. He has also failed to provide any proof that he has commenced help/treatment/monitoring after the examinations. The proof should have been filed with his quarterly reports by October 10, 2011; January 10, 2012; and April 10, 2012.

However, as of April 11, 2012, the Office of Probation has not received any motion from respondent.

Conclusions

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence. Bad faith is not a requirement for a finding of culpability in a probation violation matter. Instead, a general purpose or willingness to commit an act or permit an omission is sufficient. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Respondent did not comply with the conditions of probation, as ordered by the Supreme Court in S192393: (1) respondent has failed to file his first quarterly report due October 10, 2011; (2) respondent has failed to file proof of a mental/physical examination by August 26,

2011; and (3) respondent has failed to file proof of treatment by October 10, 2011; January 10, 2012; and April 10, 2012.

As a result, the revocation of respondent's probation in California Supreme Court order No. S192393 is warranted.

Aggravation³

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has one prior record of discipline.

In the underlying matter, respondent stipulated to two counts of felony convictions (aggravated assault and criminal threats in 2006). He was ordered suspended for two years, stayed, and placed on probation for two years, including an actual suspension of six months. (Supreme Court case No. S192393, effective July 27, 2011; State Bar Court case No. 06-C-10234.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent committed multiple acts of wrongdoing, including failing to file his quarterly report, failing to submit proof of his physical and mental examinations, and failing to submit proof of his treatment.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

An attorney's continued failure to comply with his probation conditions after being notified of that noncompliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Although the motion to revoke his probation was filed in April 2012, which put respondent on

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

notice that his probation status was in jeopardy, respondent still failed to comply with his probation conditions.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)

Respondent's failure to participate in this proceeding is also an aggravating factor.

Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Std. 1.2(e).)

Discussion

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Based on the probation deputy's declaration, respondent may have had the mental and physical examinations in August 2011. But he did not provide any report to the Office of Probation. The court has no information about the underlying cause of his probation violations or of any mitigating circumstances surrounding his misconduct since he did not participate in this proceeding.

The Office of Probation requested that respondent be actually suspended for the full amount of stayed suspension. The court agrees.

Recommendations

The court recommends that the probation of respondent **Richard John Ruszat II**, member No. 220432, imposed in Supreme Court case matter S192393 (State Bar Court case No. 06-C-10234) be revoked; that the previous stay of execution of the suspension be lifted; and that respondent be actually suspended from the practice of law for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S192393.⁴

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.⁵

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

⁴ On March 5, 2012, respondent was suspended for failure to take and pass the MPRE.

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Order of Involuntary Inactive Enrollment

Section 6007, subdivision (d)(1), provides for an attorney's involuntary inactive enrollment for violating probation if: (A) the attorney is under a suspension order any portion of which has been stayed during a period of probation, (B) the court finds that probation has been violated, and (C) the court recommends that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. The requirements of section 6007, subdivision (d)(1) have been met.

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: June 13, 2012.

RICHARD A. PLATEL
Judge of the State Bar Court

⁶The court recommends that any period of involuntary inactive enrollment be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)